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October 3, 2008

Marlene H. Dortch
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92
EX PARTE

Dear Ms. Dortch:

Cincinnati Bell Inc. ("Cincinnati Bell") is a small, integrated communications provider offering local, long distance, wireless, data, and Internet service in southwestern Ohio, northern Kentucky, and southeastern Indiana. Cincinnati Bell herein responds to the September 12, 2008 filing of Verizon,[1] in which it submitted an intercarrier compensation reform proposal to the Commission, and to other parties who also claim that $.0007 is a reasonable and compensatory termination rate for all carriers.[2]

Verizon proposed a unified default terminating rate for all carriers for all types of traffic. Verizon advocates a unified rate of $0.0007 per minute for all calls, local, intrastate toll and interstate toll. It proposed that companies recover a portion of lost access revenues from their own end users through an increased SLC and the remainder from an expanded universal service fund.

While there is much to be commended in Verizon's plan and it is laudable to have a unified rate for local reciprocal compensation, intrastate access and interstate access, Cincinnati Bell does not agree with the rate proposed by Verizon because it is far below most carriers' costs of terminating traffic. Cincinnati Bell also disagrees that a unified rate should necessarily be the same for all carriers. In that regard, on September 19, 2008, the ITTA proposed a three-tiered system under which companies in different tiers would charge different rates.[3] Whether

[1] *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Letter from Susanne A. Guyer, Senior Vice President – Federal Regulatory Affairs, Verizon, to Chairman Martin, and Commissioners Copps, Adelstein, Tate and McDowell (filed Sept. 12, 2008).

[2] See for example, *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Letter from Norina Moy, Director, Government Affairs, Sprint Nextel, to Marlene H. Dortch (filed Sept. 26, 2008).

[3] *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, Letter from Curt Stamp, President, ITTA, to Marlene Dortch (filed Sept. 19, 2008).

or not the rate levels proposed by ITTA are appropriate, Cincinnati Bell believes that the concept of different treatment of differently situated carriers has validity due to the material differences between them.

One of the stimuli for this proceeding was the difficulty in determining the true jurisdictional nature of some types of traffic. With the growing proportion of wireless and IP telephony, it has become more difficult to associate a telephone number with a physical location. When there are significant differences between the rates applicable to local and toll traffic or between intrastate and interstate traffic, delivering carriers have incentives to characterize their traffic in a manner to obtain the lowest possible rate. Having a unified rate eliminates that incentive and removes the need for carriers to determine what type of traffic they are receiving. If all terminating minutes of traffic are billed the same, regardless of where they come from, intercarrier compensation becomes much simpler, more rational and less susceptible to regulatory arbitrage.

The $0.0007 unified rate proposed by Verizon was the product of the Commission's ISP Remand Order and does not necessarily reflect any individual carrier's cost to terminate traffic. Some carriers serving ISPs had voluntarily agreed to accept such lower reciprocal compensation rates in order to assure that they received something from delivering carriers. They had the opportunity to recover any additional costs of terminating ISP traffic from their ISP customers. In order to resolve the crisis that had arisen from the billing of reciprocal compensation charges by terminating ISP carriers, the Commission devised a compromise whereby ILECs could limit their reciprocal compensation liability for ISP traffic in exchange for offering to handle all § 251(b)(5) traffic at the same rate. Carriers who opted not to lower their reciprocal compensation rates did not receive the benefit of the ISP Remand Order.

Use of the $0.0007 rate in that scenario made good sense and did not harm ILECs, largely because § 251(b)(5) traffic, unlike ISP traffic, tends to be fairly balanced – no matter what rate is charged, originating and terminating local carriers exchange relatively equal volumes of traffic so reciprocal compensation payments tend to balance out. That cannot be said about access charges because the traditional compensation system has been for interexchange carriers to compensate terminating carriers for the use of their local networks. Because there is not a two-way flow of access payments, any reduction in access rates has an immediate negative effect on the LEC, whose rate structure was developed around the concept of recovering the cost of long distance usage of its local network via access charges.

Verizon's proposal that all carriers charge the same terminating rate is inequitable to many carriers. Verizon and AT&T are integrated national carriers that have extensive local, long distance and wireless businesses. To the extent LEC access charges are reduced, the long distance and wireless segments reap the benefit of decreased rates. When an integrated national carrier lowers its access rates, much of the revenue lost by the LEC operation is made up through cost savings to the wireless and interexchange segments. That is not the case for smaller companies whose operations are more localized. Reductions in access rates reduce local revenues, but there is little or no offsetting gain to interexchange operations. The result is a net reduction in revenues for these carriers, while gains are realized by other companies that have large interexchange operations. For companies such as Verizon and AT&T, the reform proposal may actually create a positive windfall, as Verizon's plan would allow them to replace lost access revenues through a combination of end user charges and universal service funding. Gains made by long distance operations through savings in access charges together with alternative cost recovery by local operations could result in a net increase in overall revenues. Hence, Verizon's plan would favor Verizon and AT&T at the expense of smaller carriers.

Verizon's proposed Replacement Mechanism also creates potential competitive barriers. A LEC must either increase its SLC significantly or forego that revenue and impute it before drawing from the universal service fund. Increasing the SLC makes a LEC less competitive against alternative providers such as cable telephony and wireless, who generally do not have SLC charges. Here again, the plan inequitably favors the large national carriers which may not find themselves in the untenable position of having to increase SLCs because they will be able to recoup their ILEC's access charge reductions via the savings the plan generates for their long distance and wireless operations. Smaller carriers, however, do not have that option and will be forced to exacerbate access line losses by increasing SLCs or forgoing the revenue altogether. A plan that entails less drastic access revenue reductions for the non-RBOC carriers would be more equitable because the ability to recover the revenue through traditional channels is less threatened.

Because the main evil to be conquered by intercarrier compensation reform is rate inequality – as opposed to the absolute rate levels – equalizing termination rates for different types of traffic is more important than lowering rates to artificially low levels. The goal of unifying rates could be accomplished without lowering them to $0.0007 per minute. The Commission should not require termination rates any lower than a LEC's TELRIC cost to terminate traffic. Numerous state commission proceedings have occurred over the last decade to establish carriers' forward looking costs of providing local termination services and those efforts should not go to waste. Under the theory that a minute is a minute, the cost of terminating access traffic should be at least as high as the cost to terminate local calls. Sprint Nextel's proposal to use marginal costs instead of TELRIC is inappropriate because a unified rate would apply to all switched traffic, not just §251(b)(5) traffic.[4] Because every minute would be billed at the same rate, the costs should reflect the total element, not just the "next" minute.

Under Verizon's proposal, which limits the number of POIs to one per tandem serving area, all tandem switching, local transport and end office switching would come within the unified termination rate. The terminating carrier would be responsible for transporting that traffic from the POI to the end user, causing it to bear the cost of local transport from the tandem to the end office, regardless of distance. If Verizon's POI proposal is accepted, then the termination rate should be a composite of tandem switching, local transport and end office switching. Sprint Nextel's effort to justify the $0.0007 rate through a survey of TELRIC rates

[4] Sprint Nextel Sept. 26, 2008 Letter at p. 4-5.

is misleading because it uses only tandem switching and totally ignores the cost of end office switching.[5]

By setting the floor for the unified rate at a company's individual TELRIC to terminate traffic, the burden on alternative recovery mechanisms (increased SLCs and universal service support) would be minimized, while still accomplishing the main purpose of a unified rate – to eliminate arbitrary jurisdictional differences in rates. For carriers that do not have individually established TELRIC rates, the Commission could develop proxies based on a blend of rates that state commissions have already established, similar to what was done in the 1996 First Report and Order.[6]

There is no harm in individual companies having different traffic termination rates. The problem is when the same carrier has different rates for different kinds of traffic, leading to arbitrary distinctions and regulatory arbitrage. However, if the Commission wishes to levelize rates among carriers, the ITTA proposal bears fruit. It has identified three groups of carriers who are conceptually different from one another and proposes different rate structures for each group. The largest integrated national carriers advocate the $0.0007 rate, so they have no objection to it. Smaller price cap companies, for which there is no evidence that $.0007 is a reasonable or compensatory rate and which do not have the same opportunity to yield net gains from long distance operation, should be allowed to maintain higher termination rates to minimize the impact on consumers by reducing the burden on alternative recovery mechanisms. They should be afforded higher rates that cover their costs of terminating traffic. Rate of return carriers present different challenges that may best be addressed separately.

Cincinnati Bell appreciates the opportunity to provide the Commission with its views on this complex topic and urges the Commission to take them into consideration before adopting an intercarrier compensation reform plan.

Respectfully submitted,

/s/ *Christopher J. Wilson*
Christopher J. Wilson

[5] *Ibid.*, at p. 3 Note (2) following summary table.
[6] Implementation *of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, at ¶ 811 et seq. (1996).

cc: Chairman Kevin Martin
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Robert McDowell
Commissioner Deborah Taylor Tate
Dana Shaffer, Chief, Wireline Competition Bureau